

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE: CIRCUIT CITY STORES, INC. et al.
Debtors

Case #08-35653-KRH
Jointly Administered
Chapter 11

AMENDED
COLUMBIA PLAZA SHOPPING CENTER VENTURE
NOTICE OF MOTION

Columbia Plaza Shopping Center Venture (“Columbia Plaza”), by its counsel, has filed papers with the Court Requesting the Court to enter an Order Compelling Payment of Post-Petition Rent Pursuant to 11 U.S.C § 365 (d)(3).

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then on or before **February 24, 2009** of this notice, you or your attorney must:

XXX File with the court, at the address shown below, a written request for a hearing [or a written response pursuant to Local Bankruptcy Rule 9013- (H)]. If you mail your request for hearing (or response) to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

Clerk of Court
United States Bankruptcy Court
701 East Broad Street, Ste 4000
Richmond, VA 23219

You must also mail a copy to:

Robert B. Hill, Esquire
Hill & Rainey, Attorneys
2425 Boulevard, Ste 9
Colonial Heights, VA 23834

XXX Attend a hearing to be held on **March 3, 2009 @ 2:00pm**, U.S. Courthouse, Rm 5000, 701 East Broad Street, Richmond, VA 23219.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Date: 2/6/09

Signature, name, address and telephone number
of person giving notice:

/s/ ROBERT B. HILL
Robert B. Hill, Esquire
George P. Eliades, Co-Counsel SBA #38314
Hill & Rainey, Attorneys
Counsel for Columbia Plaza Shopping Center Venture
SBA #18751
2425 Boulevard, Suite 9
Colonial Heights, VA 23834
(804) 526-8300

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 6th of February, 2009, a true copy of the foregoing Notice of Motion and the Motion of Columbia Plaza Shopping Center Venture for entry of an Order Compelling Payment of Post-Petition Rent Pursuant to 11 U.S.C. §365(d)(3) to the following attached Service list and ELECTRONICALLY FILED WITH THE Clerk of Court using CM/ECF system, which shall cause notice of electronic filing to be served on all registered user of the ECF system that have filed notices of appearance in this case:

/S/ROBERT B. HILL

Robert B. Hill, Esquire

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE: CIRCUIT CITY STORES, INC. et al.
Debtors

Case #08-35653-KRH
Jointly Administered
Chapter 11

AMENDED
MOTION OF COLUMBIA PLAZA SHOPPING CENTER VENTURE
FOR AN ORDER COMPELLING PAYMENT OF
POST-PETITION RENT PURSUANT TO 11 U.S.C. §365(d)(3)

Columbia Plaza Shopping Center Venture, (“Columbia Plaza”), by and through its undersigned counsel, hereby moves for the entry of an Order compelling the above mentioned debtor (“Debtor”) to pay post-petition rent. In support of this Motion, Columbia Plaza, respectfully states as follows:

BACKGROUND

1. On November 10, 2008, the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code.
2. Columbia Plaza is a party of a Lease Agreement (“Lease”) with one or more of the debtors at the following address: Columbia Plaza Shopping Center, 1901 Bernadette Drive No. 2, Columbia, Missouri 65201. The foregoing premises is hereinafter referred to as the “Leased Premises.”
3. The debtors have been in possession of the Leased Premises since the filing of the Petitions in this case.

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4. The debtors have failed to pay rent to Columbia Plaza for the Leased Premises for

the post-petition period beginning November 10, 2008 through November 30, 2008 in the amount of Twenty Nine Thousand Nine Hundred Eighty Three and 91/100 Dollars (\$29,983.91). The Foregoing amount is hereinafter referred to as the “Stub Rent.”

RELIEF REQUESTED

5. Columbia Plaza respectfully requests the Court enter an Order that compels the debtors to immediately pay the Stub Rent to Landlord.
6. In addition, Columbia Plaza, is entitled to be paid post-petition rent on an ongoing basis on the first day of each month, said rent being paid in advance.
7. Section 365(d)(3) of the Bankruptcy Code states that the debtor-in- possession must “timely perform all the obligations of the debtor...arising from and after the order for relief under any unexpired lease or nonresidential real property, until such lease is assumed or rejected..” 11 U.S.C. §365 (d)(3). In enacting section 365 (d)(3) of the Bankruptcy Code, Congress intended to address the plight of landlords who, unlike professionals and other providers of goods and services to a debtor-in-possession in the ordinary course of business, are compelled to extend credit.
8. This case presents the circumstances that Congress intended §365(d)(3) of the Bankruptcy Code to address. The debtors have occupied and possessed the Leased premisses post-petition without performing the post-petition obligations under the Lease.
9. Courts have continually held that a landlord is entitled to immediate payment of post-petition, pre-rejection rental payments, pursuant to 11 U.S.C. §365(d)(3). See in re: *Pudgie's Div. Of New York, Inc.*, 202 B.R. 832 (Bankr. S.D.N.Y. 1996); see also In re: *Wingspread Corp.*, 178 B.R. 305 (Bankr.D. Mass. 1995); see also In re: *Manhattan King David Restaurant, Inc. V. Levine*, 163 B.R. 36 (S.D.N.Y. 1993); see also In re: *Rare Coin Galleries of American, Inc.*, 72 B.R. 748 (d. Mass 1987); see also in re: *Matter of the Barrister of Delaware Ltd.*, 49 B.R. 446 (Bankr.D. Del. 1985). Accordingly, the Court should enter and order that compels the Debtor to immediately pay the Post-Petition Rent to Burbank to satisfy its obligations under the Lease and §365(d)(3) of the Bankruptcy Code.

10. Additionally, pursuant to the terms of the Lease, the Debtor is obligated to reimburse Columbia Plaza for the reasonable attorney's fees and cost incurred by Columbia Plaza in connection with debtor's failure to comply with the terms of the Lease. Accordingly, Columbia Plaza respectfully requests the debtors be directed to pay attorney's fees and costs incurred by Columbia Plaza in connection with the filing and prosecution of this Motion.

WHEREFORE, Columbia Plaza respectfully requests this Court to enter an Order that compels debtors to immediately pay Columbia Plaza the amount of Twenty Nine Thousand Nine Hundred Eighty Three and 91/100 Dollars (\$29,983.91) plus Landlord's reasonable attorney's fees and costs and grant Landlord such other and further relief as the Court deems proper and equitable.

Dated: January 29, 2009

COLUMBIA PLAZA SHOPPING CENTER VENTURE
BY: /s/ ROBERT B. HILL
Of Counsel

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